IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.134 OF 1995

Bank of Maharashtra, a body corporate)
constituted under the Banking Companies)
(Acquisition and Transfer of Undertaking)
Act V of 1970 having their Head Office)
at Lokmangal, 1501, Shivaji Nagar,)
Pune 411 005 and their Branch office at)
Deonar Colony, Bombay 400 071.)...Plaintiffs

Versus

Ashok Gurudayal Arora, carrying on)
business in the firm name and style and)
as the Sole Proprietor of M/s.A.G.Enter-)
prises at L.G. 26, 1/3, S.G.Barve Marg,)
Kurla (E), Bombay 400 024.)...Defendant

Ms Varsha Parulekar i/by Shri A.B.Shinde for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : SEPTEMBER 29th, 2007.

ORAL JUDGMENT:

1. The Plaintiffs have filed this suit by invoking Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 for a money decree in the sum of Rs.52,667.92/- together with interest thereon as prayed.

2. According to the case of the Plaintiff, the Defendant is carrying on business in the name and style of M/s.A.G.Enterprises as a sole proprietor thereof. On the application made by the Defendant, the Plaintiffs granted cash credit facility to the Defendant to the

extent of Rs.25,000/-. The Defendant executed a demand promissory note dated 24th January, 1989 in favour of the Plaintiffs by way of security for repayment of loan. The Defendant also executed a letter of continuing security dated 24th January, 1989 in favour of the Plaintiff. By a letter of acknowledgment dated 31st December, 1991 the Defendant acknowledged that a sum of Rs.31,899.41/- was due and payable by him at the foot of the said cash credit account. As the Defendant did not pay the amount, by legal notice dated 19th November, 1994, the Defendant was called upon to pay the outstanding amount with interest.

3. The summons for judgment taken out by the Plaintiff. By order dated 13th January, 1997 leave to defend the suit was granted to the Defendant. However, written statement is not filed by the Defendant.

4. The Plaintiffs have examined Shri Narayan Anandrao Bhosale as their witness. The said witness has proved various documents. Exhibit P-1 is the letter of proprietorship dated 24th January, 1989 executed by the Defendant informing the Plaintiff that he is the sole proprietor of M/s.A.G.Enterprises. Exhibit P-3 is the demand promissory note dated 24th January, 1989 and Exhibit P4 is the letter of continuing security of the

same date. Exhibit A-6 is the letter of acknowledgment acknowledging the execution of the promissory note and the liability to pay a sum of Rs.31,899.41/- as on 31st December, 1991 at the foot of the cash credit account. The Plaintiffs have also produced a certified extract of the cash credit account of the Defendant. The said extract has been issued in accordance with law provisions of the Bankers' Book Evidence Act, 1891. There is no contest by the Defendant.

5. The aforesaid documents clearly establish the claim of the Plaintiffs.

6. Though the suit deserves to be decreed, interest payable at quarterly rests cannot be granted and simple interest at the rate of 14.5% will have to be granted.

7. Hence, the suit is decreed in terms of prayer clause (a) with a modification that the interest payable will be at the rate of 14.5% per annum from the date of institution of the suit till the date of payment or realisation. The Defendant will pay costs of the suit to the Plaintiff.

8. The Plaintiffs will be entitled to refund of court fees, if any, as per the rules.

9. Certified copy is expedited.

JUDGE